

VIII. Résumé

International documents and constitutional legislation impose a duty on the Czech Republic to provide everybody without exception with the right to judicial protection, fair decision and the enforcement of imposed duties. The Czech Republic performs the duty mentioned above by means of the law-courts which are required to act upon the Civil Procedure Code. The Civil Procedure Code therefore represents the instrument of enforcement of law that is the background to the fair judicial decisions in the constitutional, legal procedural and substantive framework. The legal procedural framework is represented by the principles of due and fair process (article 36 et sequentia of the Charter of Rights and Freedoms) the integral part of which is also the right to hear a law case without reasonable delays, or (if you like) the right to settle a case by court in reasonable time, as resulting from the established practice of the Constitutional Court of the Czech Republic.

The Civil Procedure Code is the law which is supposed to connect all these requirements, thus to guarantee the quick, flexible and fair judicial proceedings crowned with the fair decision. If the judicial proceeding fails to perform these duties, it should not prevent the courts from complying with these requirements at least. As described above this is not easy.

This work is trying to analyse the valid legal situation, to point at its imperfections, disputable and contradictory provisions and to offer a solution of particular cases. It is evaluating the contemporary legal regulation which (in up to pressing effort to quick, flexible and effective proceedings) forces the courts to fulfil the principle of the “formal truth”. Then the courts render decisions which do not correspond to the real legal conditions, do not protect the really existing rights and do not impose duties which really exist. The

author of this work is not arguing for the principle of the “material truth” but is offering a solution how to exclude its opposite – the principle of the “formal truth”, namely by course of “loosening” of some provisions of the Civil Procedure Code and providing for the judicial discretion.